

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>General Administration</u> STATEMENT NUMBER <u>1.48</u>
SUBJECT: PETITION TO SUSPEND SENTENCE PROPONENT: <u>John Vinson, Staff Attorney</u> <i>Name/Title</i> <u>Commissioner's Office 271-5604</u> <i>Office Phone #</i>	EFFECTIVE DATE <u>06/15/07</u> REVIEW DATE <u>02/15/08</u> SUPERSEDES PPD# <u>1.48</u> DATED <u>07/15/06</u>
ISSUING OFFICER: <u>William Wrenn, Commissioner</u>	DIRECTOR'S INITIALS _____ DATE _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: NONE	

I. PURPOSE:

To establish procedures for recommendations to the Court relative to the suspension of a sentence.

II. APPLICABILITY:

To all inmates and staff who may become involved in sentence modification requests.

III. POLICY:

It is the policy of the Department of Corrections to process an inmate's request to petition the court within timelines specified in state law.

IV. PROCEDURES:

A. Laws Governing Sentence Modification:

1. RSA 651:20 (Attachment 1) provides that a petition to suspend a sentence may not be brought until 2/3 of the sentence or 4 years whichever is greater, has passed since commencement of the sentence nor more frequently than every 3 years thereafter. However, a petition to suspend the sentence of a State Prison inmate may be brought at any time upon the recommendation of the Commissioner/designee.
2. Persons sentenced prior to 1990 could petition the Court every two years consistent with the version of RSA 651:20 that existed at the time of sentencing (attachment 2).
3. Rules of the Superior Court (103 A) require that when petitions to suspend, amend, reduce or otherwise change the custody status of any person incarcerated is filed with the Court, a copy is forwarded by the defendant's counsel or the Clerk for pro se petitions to the Warden. The Offender Record Office shall have a period of 30 days in which to file a response.

B. Screening of Inmates:

1. When the petition meets with requirements of RSA 651:20, the Offender Records Office will prepare a synopsis of the inmate's confinement history (Attachment 3) with special emphasis on recommended programs, goals or identified needs and the inmate's participation in such activities. Observations will also be included concerning

behavior, work, attitude, education, training, treatment or other indicators of change. Descriptions of program participation and other descriptions of behavior and adjustment to prison will be objective.

2. Directors will ensure that when programs under their control are requested to provide input for such recommendations, that the data is furnished to Offender Records accurately and speedily.

C. Report Distribution and Content:

1. Offender Records will furnish the completed information to the Court, the prosecutors, and the petitioners and/or their counsel, and Field Services.
2. A record of petitions received will be maintained by Offender Records which will include:
 - a. The inmate involved
 - b. Any court action taken.
3. No synopsis will be provided if the inmate is not eligible under RSA 651:20.

REFERENCES:

Standards for the Administration of Correctional Agencies
Second Edition Standards

Standards for Adult Correctional Institutions
Fourth Edition Standards

Standards for Adult Community Residential Services
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services
Third Edition Standards

Other

RSA 651:20

RSA 651:25

State v. Reynolds 138 NH 519

VINSON/pf

Attachments

651:20 Incarceration Under Suspended Sentence. –

I. Notwithstanding any other provision of law, except as provided in subparagraphs (a), (b), and (c), the sentence to imprisonment of any person may be suspended by the sentencing court at the time of imposition of the sentence or at any time thereafter in response to a petition to suspend sentence which is timely brought in accordance with the limitations set forth below in subparagraphs (a), (b), and (c).

(a) Any person sentenced to state prison shall not bring a petition to suspend sentence until such person has served at least 4 years or 2/3 of his minimum sentence, whichever is greater, and not more frequently than every 3 years thereafter.

(b) A petition to suspend the sentence of any state prisoner may be brought at any time if, prior to the petition being filed, the commissioner of the department of corrections has found that the prisoner is a suitable candidate for suspension of sentence.

(c) A petition to suspend the sentence of any state prisoner may be brought at any time by the attorney general in recognition of substantial assistance by the inmate in the investigation or prosecution of a serious felony offense.

(d) Petitions filed which do not meet the criteria in (a), (b), or (c) above shall be dismissed without a hearing.

II. A person whose sentence has been suspended may be required to report to the institution to which he has been sentenced to be incarcerated during weekends or at such times or intervals of time as the court may direct, except that weekend sentence provisions do not apply to the New Hampshire state prison. Time so spent in said institution shall be deducted from the maximum term, and where there is both a minimum and maximum term, from both. Any part of a day spent in the institution shall count as a full day toward the sentence.

III. As a condition of any suspension of sentence, the court may include restitution to the victim, as provided in RSA 651:62-67, performance of uncompensated public service as provided in RSA 651:68-70, and such other conditions as the court may determine.

Source. 1971, 518:1. 1979, 407:3. 1981, 516:1. 1982, 36:3. 1990, 266:3. 1992, 254:13. 1994, 129:1, eff. July 22, 1994; 192:5, eff. July 1, 1994. 1996, 286:5, eff. July 1, 1997.

§ 651:25. Release from State Prison.

I. The commissioner of corrections may release any person who has been committed to the state prison at any time during the term of sentence for the purpose of obtaining and working at gainful employment, for the performance of uncompensated public service as provided in RSA 651:68-70, or for such other purpose as may be deemed conducive to his rehabilitation, for such times or intervals of time and under such terms and conditions as may be prescribed by the commissioner pursuant to RSA 541-A, provided, however, that a prisoner who has not served sufficient time to be eligible for parole may be released under this section only if the sentencing court has been notified of the proposed release and has not objected within 10 days of receipt of such notice. The commissioner of corrections may permit inmates of the state prison, who volunteer to do so, to be gainfully employed outside the institution when such employment is considered in their best interest and the best interest of the state. Inmates may be so employed by the state or by public or private employers.

II. The rates of pay and other conditions of employment of a person released for work shall be the same as those paid or required in the locality in which the work is performed. An inmate so employed shall surrender to the commissioner of corrections his total earnings less payroll deductions authorized by law, including income taxes. After deducting from the earnings of each person an amount determined to be the cost of the person's keep, the commissioner shall:

(a) Allow the person to draw from the balance a sufficient sum to cover his incidental expenses;

(b) Credit to his account such amount as seems necessary to accumulate a reasonable sum to be paid to him on his release;

(c) Cause to be paid such part of any additional balance as is needed for restitution payments to

claimants pursuant to RSA 651:62 through 66;

(d) Cause to be paid such part of any additional balance as is needed for the support of the person's dependents and notify the overseer of public welfare of the town, in which the person's dependents reside, of such support payments;

(e) Pay the balance to the person when he is released.

III. Any part of a day a prisoner is employed outside the walls of the institution shall count as a full day toward the serving of his sentence as though served inside the walls. An inmate so employed outside shall be subject to the rules and regulations of the institution and be under the direction and control of the officers thereof.

IV. If an inmate released for work escapes or fails to return inside the walls of the institution as required by the rules or the orders of the officers thereof or if on administrative home confinement, knowingly leaves a place without authority to do so, such inmate shall be punished as provided by RSA 642:6. The commissioner of corrections may at any time recall a prisoner from such release status if the commissioner believes or has reason to believe the peace, safety, welfare, or security of the community may be endangered by the prisoner being under such release status.

V. A prisoner authorized to work at paid employment in the community under this section may be required to pay, and the commissioner of corrections is authorized to collect, such cost incident to the prisoner's confinement as the commissioner deems appropriate and reasonable. Such collections shall be deposited with the state treasurer as a part of the general revenue of the state.

VI. A low-risk, nonviolent prisoner who has not served sufficient time to be eligible for parole as provided in RSA 651-A:6, I, may be released on parole notwithstanding such provision, subject to the other provisions of RSA 651-A, provided that the following requirements are met before the parole board schedules a hearing on the proposed parole:

(a) The prisoner has been sentenced to the state prison for an offense other than capital, first degree or second degree murder, attempted murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault or first degree assault;

(b) The prisoner has been assigned a course of programs or treatment, has successfully completed such course, and has been found by the commissioner of corrections to be a suitable candidate for early parole;

(c) The commissioner of corrections has submitted findings and a recommendation for early parole to the parole board; and

(d) The commissioner of corrections has notified the sentencing court of the proposed parole, and the court has not objected in writing within 20 days of such notice.

THE STATE OF NEW HAMPSHIRE v. JOSEPH LECOUFFE
SUPREME COURT OF NEW HAMPSHIRE
152 NH 148152 N.H. 148; 872 A.2d 773872 A.2d 773; 2005 NH LEXIS 562005 N.H. LEXIS 56
No. 2004-526
April 22, 2005, Opinion Issue

The terms of a criminal defendant's sentence, particularly those addressing when he is allowed to bring petitions to suspend his sentence, are governed by the statutes in effect when he committed his crime. See *State v. Reynolds*, 138 N.H. 519, 522-23, 642 A.2d 1368 (1994) . The defendant committed his crimes in 1990, and the version of RSA 651:20 in effect at the time allowed state prisoners to bring petitions to suspend their sentences every two years. RSA 651:20 . Following the rule laid out in *Reynolds*, the defendant's sentence is governed by the 1990 version of RSA 651:20 . He is, therefore, entitled to petition the court for suspension of his sentence every two years.

RESPONSE TO MOTION TO SUSPEND SENTENCE

DOCKET:

RE:

This synopsis is a report of the information presently contained in subject's Offender Record. The Presentence Report filed in the above docket is incorporated by reference. Criminal record and mental health data (where appropriate) are attached to original file in court records.

PRESENTLY HOUSED:

PRESENT CRIME:

PRIOR New Hampshire STATE PRISON INCARCERATIONS:

PAROLE VIOLATIONS:

PRESENT MINIMUM PAROLE ELIGIBILITY DATE:

MAXIMUM RELEASE DATE:

COURT ORDER/RECOMMENDATIONS:

CASE PLAN REQUIREMENTS:

CASE PLAN RECOMMENDATIONS:

STATUS OF REQUIREMENTS:

STATUS OF RECOMMENDATIONS:

OTHER PERTINENT INFORMATION:

COUNSELOR COMMENTS:

DISCIPLINARY RECORD:

cc: County Attorney
Defense Counsel
Inmate